

5.0 MEPA Notice of Project Change

Commonwealth of Massachusetts
Executive Office of Environmental Affairs ■ MEPA
Office

NPC

For Office Use Only
Executive Office of Environmental Affairs

MEPA Analyst:
Phone: 617-626-

Notice of Project Change

The information requested on this form must be completed to begin MEPA Review of a NPC in accordance with the provisions of the Massachusetts Environmental Policy Act and its implementing regulations (see 301 CMR 11.10(1)).

Project Name: Muddy River Flood Control, Water Quality & Habitat Enhancement & Historic Preservation Project¹		EOEA #: 11865
Street: Muddy River between the Riverway and Avenue Louis Pasteur		
Municipality: Boston	Watershed: Muddy River	
Universal Transverse Mercator Coordinates: X: 326550 Y: 4689995	Latitude: 71° 6' 25" Longitude: 42° 20' 40"	
Status of project construction: 0 %complete		
Proponent: City of Boston Department of Parks & Recreation		
Street: 1010 Massachusetts Avenue		
Municipality: Boston	State: MA	Zip Code: 02218
Name of Contact Person From Whom Copies of this NPC May Be Obtained: Margaret Dyson		
Firm/Agency: Boston Parks & Recreation	Street: 1010 Massachusetts Avenue	
Municipality: Boston	State: MA	Zip Code: 02218
Phone: (617) 961-3028	Fax: (617) 635-3256	E-mail: mdyson@cityofboston.g

In 25 words or less, what is the project change? **Modification on the type of flow conveyance structures, the size of the structures, the footprint occupied by the structures and elimination of a surface roadway.**
See full project change description beginning on page 3.

Date of ENF filing or publication in the Environmental Monitor: **February 10, 1999**

¹ This NPC addresses the Phase 1 project located between the Riverway and Avenue Louis Pasteur.

Was an EIR required? ☒ Yes ☐ No; if yes,
 was a Draft EIR filed? ☒ Yes (Date: **January 21, 2001**) ☐ No
 was a Final EIR filed? ☒ Yes (Date: **February 3, 2003**) ☐ No
 was a Single EIR filed? ☐ Yes (Date:) ☒ No
 Supplemental EIR filed February 15, 2005

Have other NPCs been filed? ☒ Yes (Date(s):) ☐ No
 8/22/01 Back Bay Yard Sewer Separation
 9/25/01 Plant Material Removal and Planting Agassiz Bridge

If this is a NPC solely for lapse of time (see 301 CMR 11.10(2)) proceed directly to
"ATTACHMENTS & SIGNATURES" on page 4.

PERMITS / FINANCIAL ASSISTANCE / LAND TRANSFER

List or describe all new or modified state permits, financial assistance, or land transfers not previously reviewed:

N/A

Are you requesting a finding that this project change is insignificant? (see 301 CMR 11.10(6)) ☒ Yes ☐ No; if yes, attach justification.

Under 301 CMR 11.10 (6)(a), this change impacts less than 10% of the project area, which extends from Wards Pond to the Charles River.

Under 301 CMR 11.10 (6)(b), this change will not generate impacts beyond those identified in earlier filings.

Paragraphs 301 CMR 11.10 (6)(c) through (g) are not applicable to this NPC.

Are you requesting that a Scope in a previously issued Certificate be rescinded?
☐ Yes ☒ No; if yes, attach the Certificate

Are you requesting a change to a Scope in a previously issued Certificate? ☐ Yes
☒ No; if yes, attach Certificate and describe the change you are requesting:

Summary of Project Size & Environmental Impacts	Previously reviewed	Net Change	Currently Proposed
LAND			
Total site acreage*	XXXX	XXXX	9.5
Acres of land altered	XXXX	no change	
Acres of impervious area	XXXX	-.25	XXXX
Square feet of bordering vegetated wetlands alteration	XXXX	no change	XXXX
Square feet of other wetland alteration	XXXX	no change	XXXX

Acres of non-water dependent use of tidelands or waterways	N/A	N/A	N/A
STRUCTURES			
Gross square footage	XXXX	-4200	XXXX
Number of housing units	N/A	N/A	N/A
Maximum height (in feet)	N/A	N/A	N/A
TRANSPORTATION			
Vehicle trips per day	N/A	N/A	
Parking spaces	N/A	N/A	N/A
WATER/WASTEWATER			
Gallons/day (GPD) of water use	N/A	N/A	N/A
GPD water withdrawal	N/A	N/A	N/A
GPD wastewater generation/ treatment	N/A	N/A	N/A
Length of water/sewer mains (in miles)	N/A	N/A	N/A

Does the project change involve any new or modified:

1. conversion of public parkland or other Article 97 public natural resources to any purpose not in accordance with Article 97? ☐ Yes ☒ No
2. release of any conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction? ☐ Yes ☒ No
3. impacts on Estimated Habitat of Rare Species, Vernal Pools, Priority Sites of Rare Species, or Exemplary Natural Communities? ☐ Yes ☒ No
4. impact on any structure, site or district listed in the State Register of Historic Place or the inventory of Historic and Archaeological Assets of the Commonwealth?
☒ Yes ☐ No; if yes, does the project involve any demolition or destruction of any listed or inventoried historic or archaeological resources? ☐ Yes ☒ No
5. impact upon an Area of Critical Environmental Concern? ☐ Yes ☒ No

If you answered 'Yes' to any of these 5 questions, explain below:

#4 The project is in the Emerald Necklace Park System which is listed on the National Register of Historic Places.

PROJECT CHANGE DESCRIPTION (attach additional pages as necessary). The project change description should include:

- (a) a brief description of the project as most recently reviewed
- (b) a description of material changes to the project as previously reviewed,
- (c) the significance of the proposed changes, with specific reference to the factors listed 301 CMR 11.10(6), and
- (d) measures that the project is taking to avoid damage to the environment or to minimize and mitigate unavoidable environmental impacts. If the change will

involve modification of any previously issued Section 61 Finding, include a proposed modification of the Section 61 Finding (or it will be required in a Supplemental EIR).

Project Description

(a) Muddy River Flood Control, Water Quality & Habitat Enhancement & Historic Preservation Project Description as Previously Reviewed

The Muddy River Flood Control, Water Quality & Habitat Enhancement & Historic Preservation Project (MRP) is a comprehensive project that addressed issues related to flooding, water quality, habitat enhancement, historic preservation and sediment control. A subsection of the MRP is a flood damage reduction project that is being designed and implemented in partnership with the US Army Corps of Engineers (Corps). Joining in partnership with the Corps is the Commonwealth of Massachusetts (State), the City of Boston (Boston) and the Town of Brookline (Brookline) who collectively are referred to as the non-Federal sponsors (sponsors).

The flood damage reduction project is designed to address flooding issues caused by undersized twin 72-inch culverts through which the Muddy River flows from the Riverway to Avenue Louis Pasteur and the inability to convey flood waters efficiently in the riverine reaches of the Muddy River from immediately below Leverett Pond to Charlesgate.

The flood damage reduction portion of the plan previously reviewed called for the dredging of a flow conveyance channel starting at Leverett Pond downstream to the Riverway twin culverts. A new 10 foot by 16 foot culvert was to be installed to supplement the flow under the Riverway. Immediately downstream of the Riverway the Muddy River was to be day lighted in the area commonly referred to as the "old Sears parking lot" which is located across from the current Landmark Center. The Muddy River would be restored to open channel flow from the Riverway to Brookline Avenue. At Brookline Avenue the existing twin 72-inch culverts would be removed and a single 10 foot by 24 foot culvert constructed to pass the Muddy River under both Brookline Avenue and the Jug Handle Roadway. The area downstream of the Jug Handle Roadway would also be day lighted restoring the Muddy River to open channel flow to the Avenue Louis Pasteur culvert. Downstream of the Avenue Louis Pasteur culvert additional dredging would occur for the development of a flow conveyance channel to the Charlesgate area.

The Corps, which is designing the flood damage reduction project, has separated the design and implementation of the project into two phases. Phase 1 consists of the area between the Riverway and immediately upstream of Avenue Louis Pasteur and involves the two culverts and the day lighting areas. Phase 2 would consist of the dredging of the Muddy River flow conveyance channel from downstream of Leverett Pond to the Riverway and from downstream of Avenue Louis Pasteur to Charlesgate. The reason that the project was broken into two phases was to allow for the solicitation of two separate contractors that were specialist in the type of work to be performed. The Phase 1 work would be more appropriate for a general contractor specializing in vertical construction and Phase 2 work is more appropriate for a contractor specializing in environmental dredging.

(b) Description of material changes to the project as previously reviewed.

Changes from Culverts to Bridges - The flood damage reduction portion of the plan previously reviewed called for the installation of a 10 x 16 foot culvert under the Riverway to supplement the existing twin 72" culverts. It also called for the installation of a 10 x 24 foot culvert starting upstream of Brookline Avenue and running to downstream of the Jug Handle Road. The culverts would require approximately 1800 driven piles to provide the proper foundation support. The project design team reviewed an alternative proposal that would install concrete arch bridge sections in place of the culverts. In order to not reduce the hydraulic efficiencies that the culverts would have with a "concrete floor", a concrete floor would also be installed in the bridge arch sections. To the layman, the bridge arches with the concrete "floor" would appear to be concrete arched culverts. The difference is that the structures weight is supported by the bridge piers and therefore we can place caissons under the piers in lieu of pilings under the entire culvert structure for foundations support. Since the difference between culverts and bridges is really due to how the structure is supported, for the rest of this narrative we'll still use the term "culvert" when describing the structures to avoid confusion of the general public.

Elimination of Twin Culverts under Riverway - The flood damage reduction portion of the plan previously reviewed called for the installation of a 10 x 16 foot culvert under the Riverway to supplement the existing twin 72" culverts. The Project Design Team evaluated the elimination of the culverts in the final stages of construction (after they bypass water during the construction of a new culvert/bridge under the Riverway). The Riverway culvert would be increased in size to 10 x 24 feet to accommodate all of the flow that needs to be conveyed. Elimination of the existing culverts allows for better alignment of the "day lighted" section under the former Sears Rotary and reduces the maintenance requirements of the conveyance structures.

Brookline Avenue to the Jug Handle Road Culvert – The 10 foot by 24 foot culvert in the previously reviewed plan started immediately upstream of Brookline Avenue and continued to immediately downstream of the Jug Handle Road. This culvert will now be shortened so that it conveys the flow only under Brookline Avenue. The area between the downstream side of Brookline Avenue and the downstream side of the current Jug Handle Road will be day lighted. This will provide and additional 10,000 square feet of day lighted river and park area. Reducing the length of the culvert will also potentially improve upstream migration of anadromous fisheries since fish prefer lighted areas over darkened areas. The shorter culvert would minimize the length of fish passage in the darkened culvert sections.

Elimination of the Jug Handle Road – In shortening the Brookline Avenue to Jug Handle Road structure into two separate structures, the Project Design Team created additional open space and day lighting of the river. However, there is an increase in the head losses with the flow exiting one culvert (Brookline Avenue culvert) into an open channel and then being directed back into another culvert to go under the Jug Handle Road. This would require an increase in the size of the Jug Handle Road culvert to avoid an increase in river stage. As part of the Project Design Team's evaluation the Team also looked at the possibility of eliminating the Jug Handle Road. Removing this roadway would eliminate the need for a culvert under it and would allow for additional "day lighting" and open park space improving the environmental conditions in the river and returning a longer section of the river to

its historic appearance.

The Jug Handle Road was constructed to allow vehicles that were traveling on Brookline Avenue inbound or from the Riverway that wish to continue onto Park Drive toward Brookline to access Park Drive. Currently no left hand turn is allowed on Brookline Avenue/Park Drive intersection. Vehicles traveling on Brookline Avenue inbound turn onto the Jug Handle Road after the Fenway to make the turn onto Park Drive. Under current conditions, all vehicles traveling on the Riverway inbound must make a right turn at the end of the Riverway onto the Fenway (Road). In order to make the turn onto Park Drive, they too need to utilize the Jug Handle Road.

The Project Team formulated an alternative that would allow the elimination of the Jug Handle Road and improve traffic flow in the area. Past evaluations of the elimination of the Jug Handle Road have focused on the addition of a dedicated left turn lane on Brookline Avenue inbound for the left turn onto Park Drive. However, the volume of traffic that would make this turn originating from either Brookline Avenue (from the Medical center) or the Riverway would require two turning lanes to avoid a queuing problem. There is insufficient lane capacity to add two left turn lanes without impacting traffic flow in the area. The Project Design Team concluded that it would need to reduce the volume of traffic wishing to make left turns at Brookline Avenue onto Park Drive in order to not impact this intersection.

The team's concept involves the redesign of the Riverway/Fenway/Park Drive intersection to allow vehicles traveling inbound on Riverway to access Park Drive directly instead of traveling to the Brookline Avenue area. This would reduce the volume of traffic on Brookline Avenue that a single left turn lane on Brookline Avenue would suffice to handle the turns required.

Currently all traffic must turn right at the end of the Riverway onto the Fenway (see Figure 1 for the existing intersection layout). Traffic from the Riverway that wants to turn left onto Brookline Avenue or the Jug Handle Road must cross traffic that is coming from Park Drive that wishes to make a right turn on Brookline Avenue. This short merge area with no traffic control can cause delays and has the potential for accidents.

The revised Riverway intersection (see Figure 2) would allow vehicles traveling on the Riverway that wish to continue onto Park Drive to continue through a redesigned intersection with additional traffic control. This redesigned intersection would also eliminate the conflict between the Park Drive traffic traveling to Brookline Avenue outbound and traffic from the Riverway turning onto Brookline Avenue inbound since they will travel through the area under different traffic signal phases. The removal of the Riverway traffic from the Brookline Avenue/Park Drive intersection allows for the implementation of a left turn lane that can accommodate the desired left turns without impacting traffic flow. Traffic information was provided to both the Boston Transportation Department and the Department of Conservation and Recreation Traffic section who concurred with the Design Team's concept and assessment. The concept was also reviewed by the Boston Landmarks Commission and Massachusetts Historical Commission for compliance with historic preservation regulations.

The elimination of the Jug Handle Road will provide 18,500 additional square feet of open parkland. It will also rehabilitate the historic riverbank consistent with Olmsted's design of the park.

ATTACHMENTS & SIGNATURES

Attachments:

1. Secretary's most recent Certificate on this project
2. Plan showing most recent previously-reviewed proposed build condition
3. Plan showing currently proposed build condition
4. Original U.S.G.S. map or good quality color copy (8-1/2 x 11 inches or larger) indicating the project location and boundaries
5. List of all agencies and persons to whom the proponent circulated the NPC, in accordance with 301 CMR 11.10(7)

Signatures:

4/17/08 Antonia M. Pollak
Date Signature of Responsible Officer
or Proponent

4/15/08 Michael F. Keegan
Date Signature of person preparing
NPC (if different from above)

Antonia Pollak
Name (print or type)

Michael F. Keegan
Name (print or type)

Boston Parks & Recreation
Firm/Agency

Corps of Engineers, New England
Firm/Agency

010 Massachusetts Avenue
Street

696 Virginia Road
Street

Boston, MA 02218
Municipality/State/Zip

Concord, MA 01742-2751
Municipality/State/Zip

(617) 961-3028
Phone

(978) 318-8087
Phone

Attachment 1

Notice of Project Change - Muddy River Flood Control, Water Quality, Habitat
Enhancement and Historic Preservation Project

EOEA # 11865



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114-2524

FILE COPY

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

ELLEN ROY HERZFELDER
SECRETARY

April 1, 2005

Tel. (617) 626-1000

Fax. (617) 626-1181

<http://www.mass.gov/envir>

CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS ON THE SUPPLEMENTAL FINAL ENVIRONMENTAL IMPACT REPORT

PROJECT NAME : Emerald Necklace Environmental
Improvements Master Plan and Phase I
Muddy River Flood Control, Water
Quality and Habitat Enhancement, and
Historic Preservation Project

PROJECT MUNICIPALITY : Boston and Brookline

PROJECT WATERSHED : Charles River

EOEA NUMBER : 11865

PROJECT PROPONENT : Boston Parks and Recreation Department
and Town of Brookline

DATE NOTICED IN MONITOR : February 23, 2005

As the Secretary of Environmental Affairs, I hereby determine that the Supplemental Final Environmental Impact Report (SFEIR) submitted for this Project **adequately and properly** complies with the Massachusetts Environmental Policy Act (M.G.L. c. 30, ss. 61-62H) and its implementing regulations (301 CMR 11.00).

This Project will restore a significant component of the Emerald Necklace Park system and reestablish Frederick Law Olmsted's vision that combines landscape architecture, planning, and engineering to integrate the beauty and tranquility of the natural world in the human metropolitan experience.

The Executive Office of Environmental Affairs (EOEA), together with the Proponents and numerous dedicated people from governmental agencies, advocacy groups, and the general public have invested considerable time and resources into planning for the rehabilitation of the Muddy River and its environs, one of the nation's finest linear parks. I will continue to work with the Proponents, the Department of Conservation and Recreation

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(DCR), the Maintenance and Management Oversight Committee (MMOC), the Emerald Necklace Conservancy (ENC), and the many stakeholders who have committed their time and energy to ensure that this Project moves forward. It is an opportunity to develop the institutional infrastructure that can make this Project a national model for urban park rehabilitation and successful long-term management.

Project Description and MEPA History

The proposed Project involves a range of physical improvements and management practices that will produce flood control, water quality improvements, habitat enhancement, landscape restoration, pedestrian and automobile circulation improvements, and building and bridge restoration along the Muddy River. The Project constitutes the first phase in the long-term restoration of the entire system of Emerald Necklace parks in Boston and Brookline. This MEPA review was conducted under a Special Review Procedure (SRP), established in a Certificate dated April 29, 1999. Pursuant to the SRP Certificate, a Citizens Advisory Committee (CAC) representing a full range of interested parties has met regularly over the past six years to review environmental documents and articulate comments in response.

As described in Table 2-2 of the SFEIR, the Project is comprised of six geographic elements, as follows:

- Charlesgate: removal of waterway obstructions under Ipswich Street; dredging 4,000 cubic yards (cy) of sediment and debris; and landscape rehabilitation. (In July 2002, a Phase I Final Record of Decision granted a waiver allowing much of this work to proceed pending completion of the FEIR).
- Back Bay Fens: daylighting culverts at the Fens Bridge and former Sears parking lot to restore the Olmsted-designed shoreline; dredging to remove 79,961 cy of accumulated sediment and debris, and 23,474 cy of Phragmites; 15,500 cy of dredging for deepened channel sections; installing new arch culverts under the Riverway and Brookline Avenue; reconstructing roadway storm drain systems; and bank and landscape rehabilitation.
- Riverway: dredging to remove 18,430 cy of sediment and debris, and 10,047 cy of Phragmites; 1,724 cy of dredging for deepened channel sections; reconstructing roadway storm drain systems; and bank and landscape rehabilitation.
- Leverett Pond: dredging to remove 21,788 cy of sediment

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- and debris; 2,063 cy of dredging for deepened channel sections; and bank, island, and landscape rehabilitation.
- Willow Pond: dredging to remove 5,054 cy of sediment and debris; 842 cy of dredging for deepened channel sections; and bank, path, and landscape rehabilitation.
 - Wards Pond: dredging to remove 15,565 cy of sediment and debris; and bank and landscape rehabilitation.

The Project also includes project-wide Best Management Practices (BMPs) for stormwater management and a maintenance and management plan. The proposed BMPs include both structural and source control BMPs, including street sweeping, catch basin cleaning, and particle separators.

Required Permits and MEPA Jurisdiction

The Project will require several variances under the Wetlands Protection Act, a 401 Water Quality Certificate, a Chapter 91 License, and a Special Waste Determination, all from the Department of Environmental Protection (DEP). The Project will require a Section 404 permit under the Federal Clean Water Act from the U.S. Army Corps of Engineers. The Project will also require a Sewer Use Discharge Permit and Section 8(M) permit from the Massachusetts Water Resources Authority (MWRA). Because the Emerald Necklace is listed on the National and State Registers of Historic Places, the Project is subject to review by the Massachusetts Historical Commission, the Boston Landmarks Commission, and the Brookline Preservation Commission. The Project is receiving financial assistance from the Commonwealth; therefore, MEPA jurisdiction is broad in scope, extending to all aspects of the Project with potential impacts on the environment.

As required in the Certificate on the FEIR, the SFEIR included a summary of all permits needed for each sub-area of the Project, and demonstrated either how the Project design meets applicable performance standards, or how the Project meets criteria for a variance from applicable performance standards.

Wetlands and Water Quality

The SFEIR presented an analysis of alternatives that was adequate for DEP to evaluate any requests for variances from the Wetland Protection Act regulations. In its comments, DEP indicated that the SFEIR satisfactorily addressed its concerns and that the proposed alteration to wetland resource areas can be permitted under the limited project provisions in the Wetlands Protection Act regulations, pursuant to 310 CMR 10.53. In their

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comment letters, both the Boston Environment Department and the Brookline Conservation Commission indicated their support of the project. Any remaining issues will be addressed during wetlands permitting and the 401 Water Quality Certification process.

The SFEIR satisfactorily addressed the scope contained in the FEIR Certificate pertaining to water quality. Upon completion of the MEPA review process, water quality sampling will be undertaken at eight river locations and seven outlets to assess the effectiveness of the BMP plan. The relationship of these outfall locations to the sediment sources and proposed improvements is not explained in the SFEIR. Therefore, it is not clear how the monitoring plan will assess sediment removal effectiveness and correlate that information with the primary reduction methods in the BMP plan. Given that the Proponents will provide data and information from the sampling in the Annual Update reports, described later in this Certificate, I expect that this and related issues will be addressed on an annual basis.

Stormwater Management/Pollution Control

The SFEIR includes a Plan for the Maintenance for the Muddy River Stormwater Facilities outlining the responsibilities of the Proponents, DCR, the City of Newton, and the Massachusetts Highway Department (MHD). The SFEIR states that:

"The goal of the BMP plan for the watershed is to decrease the estimated Year 2000 sediment loadings in the river by 30 percent. This reduction will expand the life of the dredging Project from in excess of 25 years to over 50 years. This goal can be achieved by implementing a BMP plan that includes improvements to both source and treatment control BMPs."

The full implementation of BMPs and the Stormwater Facilities Maintenance Plan is essential to protect the public investment in this Project and maximize its projected 50-year life-span.

However, in its comments, DEP states that because the modeling is based on generic, non-site specific stormwater data, which was not calibrated for local conditions, it remains to be seen whether the plan is adequate to achieve the goals described in the FEIR and SFEIR. On the other hand, the Proponents believe that the BMP plan will yield the desired results, and that they have taken a conservative approach by excluding street sweeping and public education from the estimate of the annual sediment

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removal, thereby providing a margin of error for overestimates of sediment removal in the plan.

I note that the final decision to employ specific BMPs will occur after review of the SFEIR. The selection of BMPs is, therefore, likely to be one of many important questions for the Project management to resolve after completion of the MEPA process. Therefore, I expect that the Proponents and DCR will work with DEP on the specific issues described in its comment letter as the implementation of the BMPs and the Stormwater Facilities Maintenance Plan continues to evolve over the life of the Project. The Proponents should provide updates in the Annual Reports.

Maintenance and Management Structure

I reaffirm that I consider maintenance and management as the key to ensuring that the Project meets its long-term goals and that the significant public investment in the Project is adequately protected. As stewards of this park system, we owe it to our constituents and to future generations to ensure that the parks are properly maintained to the standards delineated in the Maintenance and Management Plan, which is described in greater detail later in this Certificate.

Management Structure

Since I issued the Certificate on the FEIR, the Proponents have worked with EOE, DCR, the MMOC, the ENC, and the CAC to develop the management structure presented in the SFEIR. The Proponents have agreed to implement a management structure based upon a five-party Cabinet, including appropriate high-level management representatives of the Boston Parks and Recreation Department, Brookline Parks and Open Space, DCR, the Maintenance Management and Oversight Committee (MMOC), and the Emerald Necklace Conservancy (ENC).

The MMOC is a necessary component of the project management structure, as mandated in the Charlesgate Final Record of Decision. While the Proponents will continue to manage the resources under their control, with the flexibility they need to make day-to-day decisions and implement long-term management and operational policies, the MMOC will provide an important channel for public access to the new model of stewardship decisions being made on behalf of the general public. Strong public participation through the MMOC will help build and strengthen public support for the Project, and ultimately provide for improved stewardship system-wide.

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Memorandum of Agreement (MOA)

The maintenance and management structure that emerges from the MEPA review process will be formalized through a Memorandum of Agreement (MOA) among the Proponents, DCR, the MMOC, and the Emerald Necklace Conservancy. The management structure and its relationship to others is described in some detail in the Draft MOA, and in greater detail in the MMOC version of the Draft MOA, both of which appear in Appendix D of the SFEIR. Although still under development, the Draft MOA specifies the maintenance and management structure and the roles and responsibilities of the signatories. The MOA will include performance standards, including commitments to improved stewardship, historic preservation and maintenance of parklands, implementation and maintenance of BMPs, coordination of maintenance activities across jurisdictional boundaries, appropriate staffing commitments, commitments to provide information amongst all signatories and to the public and EOE, dispute resolution procedures, and minimum requirements for frequency of top level management meetings.

I am confident that the Proponents, DCR, the MMOC and ENC are working collaboratively and diligently towards finalizing the Draft MOA presented in the SFEIR. I strongly encourage all of the signatories to consider the changes suggested by commenters that reflect the following broad goals:

- to identify clear and consistent performance standards for all resource areas within the Project Area, including parklands, parkways and the stormwater management system;
- that DCR will maintain those areas within its care, custody and control consistent with the standards required of Boston and Brookline;
- to ensure that the Cabinet is structured and operated to encourage collaboration and to promote action of the parties by consensus, whenever possible; and
- to promote the ability of the MMOC to fulfill its appointed role as an independent oversight committee.

Maintenance and Management Plan

The DEIR Certificate dated April 16, 2002 required that the Proponents develop a:

"performance-based Maintenance and Management Action Plan...to provide assurance that maintenance responsibilities will be faithfully observed over time. The Plan should establish measurable environmental performance standards for sediment

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removal, erosion control, water quality, wetland and upland plantings, fish and benthic resources, wildlife resources, culvert maintenance, and structural source control and treatment control BMPs. The Plan should present an acceptable strategy for closing the gap between person hours needed to maintain the Project Area and the hours currently available."

The SFEIR includes a Maintenance and Management Plan that provides standards for maintenance of the Project Area after Phase I is constructed. The plan was developed with the assistance of the DCR Historic Resources staff, the ENC, Arnold Arboretum staff, and other skilled volunteers. I am satisfied that the Maintenance and Management Plan provides appropriate performance standards for the maintenance of the parklands. Implementation of the plan will require the commitment of necessary resources, including adequate trained professional and management personnel, to protect the integrity of the original Olmsted design and the public investment in this Project.

While the SFEIR and the Draft MOA delineate the maintenance responsibilities for each of the Proponents and DCR, annual dedicated funding sources for the full implementation of the Maintenance and Management Plan and the Stormwater Facilities Maintenance Plan have yet to be identified. However, the MOA and the Annual Update Reports, described later in this Certificate, are the two vehicles that will ensure that BMPs will be completed. The MOA will delineate the responsibilities of the Proponents and DCR to implement and fund BMPs, including ongoing maintenance. Because the MOA will establish the expectation of enforceable conditions in state permits and contracts for financial assistance to meet these obligations, I am confident that the Cabinet can address this issue as the Project proceeds.

Annual Update Reports

In accordance with the Special Review Procedure and as a condition of this Certificate, I am requiring that the Proponents must produce annual reports including information on the status of the Stormwater BMP program. These Annual Update Reports should include:

- the status of the database on catch basins, which is to include housekeeping data (such as when inspected, when cleaned, quantity of sediment removed);
- the status of the pilot project and a summary of results;
- the status of the implementation of structural BMPs; and
- water quality data based on sampling at storm drains and

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in-stream sampling.

I also direct the Proponents to provide a meaningful role in the Annual Update Report process to the MMOC. The process should provide an opportunity for the MMOC to provide input regarding the issues that should be addressed in the Annual Update Reports as well as for commenting on the reports. The Proponents and DCR should also be responsive to the issues raised in the reports. The Proponents' and DCR's commitments to working in a cooperative way with the MMOC on this and other issues should be embodied in the MOA.

Role of the Maintenance and Management Oversight Committee (MMOC)

The MMOC must be able to fully and meaningfully participate in the Cabinet in order to provide accountability and transparent decision-making to ensure the long-term success and the desired 50-70 year life span of the Project. In order to ensure a meaningful role for the MMOC, I will require the following:

- the MOA must provide that (a) the Proponents and DCR continue to provide adequate financial or in-kind support for the operation of the MMOC, (b) a quorum for the Cabinet be no fewer than four Cabinet members, and (c) that the parties be required to hold no fewer than four meetings annually;
- with respect to all permitting for the Project, the Proponents should provide the MMOC with notice of the filing of all permit applications and other regulatory approvals, copies of the filings, and timely notice of dates of hearings and other actions with respect to permit applications and other regulatory approvals.

Role of the Department of Conservation and Recreation (DCR)

Although the Proponents of the Project are the City of Boston and the Town of Brookline, the parkways under the care, control and maintenance of DCR are integral to the Emerald Necklace parks. The manner in which DCR maintains the parkways and other resources, including working with the Proponents to maintain catch basins and storm drains that directly and substantially affect the Muddy River park system, will help to ensure the long-term success of the Project. In its comments, DCR expressed its belief in the importance of long-term maintenance to protect the public investment in the Project and its willingness to work with the Proponents and other signatories to the MOA.

DCR is in the process of developing a parkways management plan, which has not yet been completed, but which should be

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consistent with the standards for park maintenance included in the SFEIR. The parkways management plan will guide DCR's actions in the context of overall project goals. In addition, I concur with the MMOC's recommendation that DCR should initiate the process of documenting the location of catch basins, and implement a regular system of catch basin cleaning, street sweeping and other BMPS that are consistent with project goals.

At some point in the near future, the post-construction maintenance period relating to the work completed at Charlesgate will terminate and control of the property will revert back to DCR. Until then, the City of Boston should commit to addressing the myriad issues involved in the maintenance and management of that area, including, specifically, lawn and plant maintenance, trash removal, graffiti removal, homeless encampments, and keeping the newly dredged waterway clear of debris. Adequate funding for all such maintenance should be made available.

Need for Dedicated Project Coordinator

I note and applaud the Boston Parks Department commitment to support a dedicated Project Coordinator. Because the \$92 million Project poses significant technical and administrative challenges, it warrants the appointment of this position to act on behalf of the Proponents to oversee the development of the design by the U.S. Army Corps of Engineers (ACOE), the permitting of the Project, and its ultimate construction. A dedicated Project Coordinator and additional staff are necessary to protect the public interest as the Project is designed, permitted and constructed.

The Proponents will soon sign a Design Agreement with ACOE, so the need for a dedicated Project Coordinator, with adequate time for strategic involvement in the development of the design and the necessary permitting, is immediate.

Private and Institutional Investment

The federal, state, and municipal governments have invested significant resources in the planning of this Project and in the implementation of improvements at Charlesgate and are prepared to invest significantly more in the design, construction, and maintenance of the Project. I concur with DCR's comments regarding the flood-proofing of structures as part a comprehensive strategy to address flooding along the Muddy River. Therefore, it is critical that institutional and individual property owners take pro-active steps to mitigate against flood damages.

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This Project is designed to provide flood protection from a storm event similar to that which occurred in 1996. Flood events of a higher intensity will inevitably flood adjacent lands and property owners need to anticipate these events by designing new construction and expansion of existing buildings in conformance with National Flood Insurance Standards, as delineated in the Massachusetts State Building Code and applicable City of Boston and the Town of Brookline zoning and building regulations.

Historic Resources

Preservation and restoration of the historic resources in the Project Area are integral components of the Project. The park system is listed on the State and National Registers of Historic Places, and represents an historic legacy worthy of the time and resources spent during the MEPA review to ensure sensitive restoration and appropriate future stewardship. Preservation of the historic resources is also a major goal of the Emerald Necklace Master Plan, which provides the overall context in which the current Project is undergoing review.

Carlton Street Footbridge

The Carlton Street Footbridge (CSF) is an important historic link between the Riverway and the adjacent residential neighborhoods of Brookline; the Master Plan envisions the restoration of this integral component of Olmsted's original plan. Given its documented importance, the Draft and Final EIR Certificates assumed that the Town of Brookline would "...act in good faith to expeditiously implement the elements of the Master Plan within its control, including the rehabilitation and reopening of the Carlton Street Footbridge."

I acknowledge and appreciate the Town of Brookline's efforts to move forward with the restoration and to resolve remaining issues, including accessibility for the disabled in the vicinity of the CSF. I understand that before Transportation Enhancements Program funding can be secured to restore the CSF, approvals and/or concurrence are necessary from the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Historical Commission (MHC), and the Massachusetts Architectural Access Board (MAAC). I note that, as described in the SFEIR, providing the requisite accessibility at the Longwood MBTA station appears to be a feasible approach that would satisfy both accessibility and historic preservation interests. I expect that design considerations will continue to be evaluated as the Town of Brookline addresses access issues associated with the location and design of the restoration effort.

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Towards that end, I reaffirm my commitment, as described in a letter dated May 27, 2003 to the Brookline Board of Selectmen, to work with the Town of Brookline and the Massachusetts Historical Commission (MHC) to identify possible sources of additional funding for the restoration work. In that letter, I stated that:

"The Town's objective to appropriate a matching share while seeking third party funding sources is a reasonable approach, given funding constraints in general and the overall budgetary demands of Phase I. Further, I find that having the expenditure of local funds for actual restoration contingent upon the Commonwealth funding its share of Phase I of the Project to be consistent with my May 1, 2003 Certificate (the FEIR Certificate) which conditioned the release of EOEA funds on restoration of the bridge. I am confident that by working together, we can secure the matching funds necessary to restore the Carlton Street Footbridge, as identified in the Emerald Necklace Master Plan."

Other Historic Issues

In its comments, MHC reiterated its request for more detailed plans of structural BMPs in order to ascertain their potential impacts on historic resources. I expect that the Proponents will work with MHC to provide this information prior to the development of construction drawings.

The SFEIR satisfactorily responded to the issue of the unauthorized use of Back Bay Yard (which is partially within the Olmsted system) by dirt bike enthusiasts. The Proponents have proposed a reasonable remediation and restoration program and schedule, as well as an educational program to discourage damage by dirt bikes.

Rare Species

The Natural Heritage and Endangered Species Program (NHESP) of the Division of Fisheries and Wildlife has indicated that the Project will not result in a "take" of the Threespine Stickleback, a threatened species under the Massachusetts Endangered Species Act (MESA) (M.G.L. c. 131A). The Proponents should note that NHESP has requested two changes to the proposed Environmental Monitoring and Maintenance to be conducted by the Independent Environmental Monitor and work with NHESP to implement these changes.

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Construction Management

In response to comments on the FEIR from local youth sporting leagues concerned about the possible loss of access to Daisy Field while the area is used for construction staging, I directed the Proponents to investigate whether other sites are available in the area for construction staging. The SFEIR considered other sites and concluded that the site of the former Kelly Ice Rink was most feasible for use as a construction staging area. However, in its comments, the Emerald Necklace Citizens Advisory Committee and the Charles River watershed association strongly recommend keeping Daisy Field as a construction staging area due to the potential environmental impacts of using the Kelly Rink site. In other comments, the representative of Landmark Center objected to any proposed use of the former Sears parking lot for construction staging. I expect that the Proponents will work with the affected parties to resolve these issues in a manner that minimizes disruption and impacts to the environment as the Project proceeds.

Responses to Comments

The SFEIR has responded fully and adequately to the substantial number of detailed and specific comments received on the FEIR from a wide variety of agencies, advocates, and individuals.

Role of the Citizens Advisory Committee (CAC)

I wish to thank the dedicated members of the Citizens Advisory Committee (CAC) who devoted much time and effort advising the Proponents in the preparation of MEPA documents and for providing me informative comments during review periods. The MEPA regulations at 301 CMR 11.09 allow for the creation of a CAC to advise the project Proponents and the Secretary during the review of MEPA filings. With the conclusion of the SFEIR, the active review of the project and thus the work of the CAC is largely concluded. While the CAC will cease to continue for MEPA review purposes, I know that its members will continue to be actively involved in the project. In an effort to enhance continued public involvement as the Project moves forward, I am requiring the following:

- the MMOC should be expanded to include two additional at-large members to be nominated from the CAC; and
- the MMOC should organize an annual meeting to review the progress of the project and annual reports. This meeting

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should be publicly noticed in the *Environmental Monitor* and the current CAC members and all commenters in the MEPA process should receive notice of the meeting.

Section 61 Findings

The EOE Section 61 Finding will condition release of state funding for the Muddy River Project to ensure that certain actions necessary to achieve the goals of the Project are satisfactorily addressed, and to protect the Commonwealth's significant investment in the Project. The EOE Section 61 finding will require that the Memorandum of Agreement be finalized; that a dedicated Project Coordinator be hired; and that the Town of Brookline have developed enforceable commitments and a schedule for restoration of the Carlton Street Footbridge.

The Proponents should continue to work with the permitting agencies and the MMOC as the Project enters the design phase to fully develop the required mitigation measures. The permitting agencies should develop significantly more detailed Section 61 Findings than those provided in the SPEIR, and consider the specific suggestions of the commenters.

I am directing the permitting agencies to submit Draft Section 61 Findings for the project for publication in *The Environmental Monitor* for public review and comment prior to their issuance. Draft Section 61 Findings should also be distributed to the MMOC for its review and comment.

April 1, 2005

Date


Ellen Roy Herzfelder

Comments received:

03/21/05 Councilor Michael P. Ross
03/24/05 The Fenway Alliance
03/25/05 Division of Fisheries and Wildlife
03/25/05 Brookline Conservation Commission
03/25/05 Emerald Necklace Citizens Advisory Committee
03/25/05 Friends of the Carlton Street Footbridge
03/25/05 Friends of Leverett Pond

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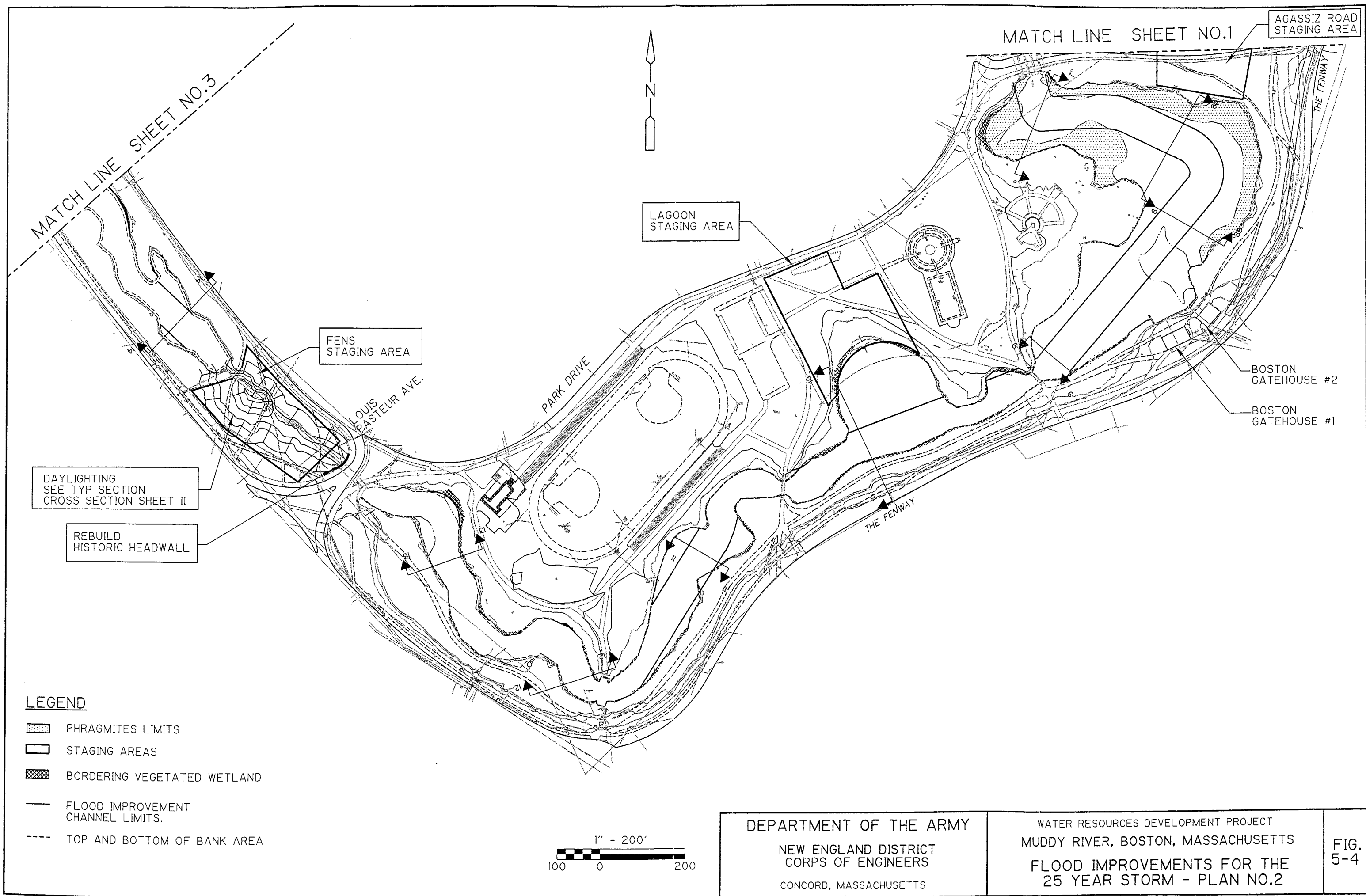
03/28/05 Brookline Greenspace Alliance
03/28/05 Medical Academic & Scientific Community Organization,
Inc.
03/28/05 Rubin & Rudman LLP
03/29/05 Department of Environmental Protection Northeast
Regional Office
03/29/05 Emerald Necklace Conservancy
03/30/05 Massachusetts Historical Commission
03/30/05 Brookline Conservation Commission
03/30/05 Charles River Watershed Association
03/30/05 Muddy River Restoration Project Maintenance and
Management Oversight Committee
03/30/05 Boston Environment Department
03/31/05 Department of Conservation and Recreation

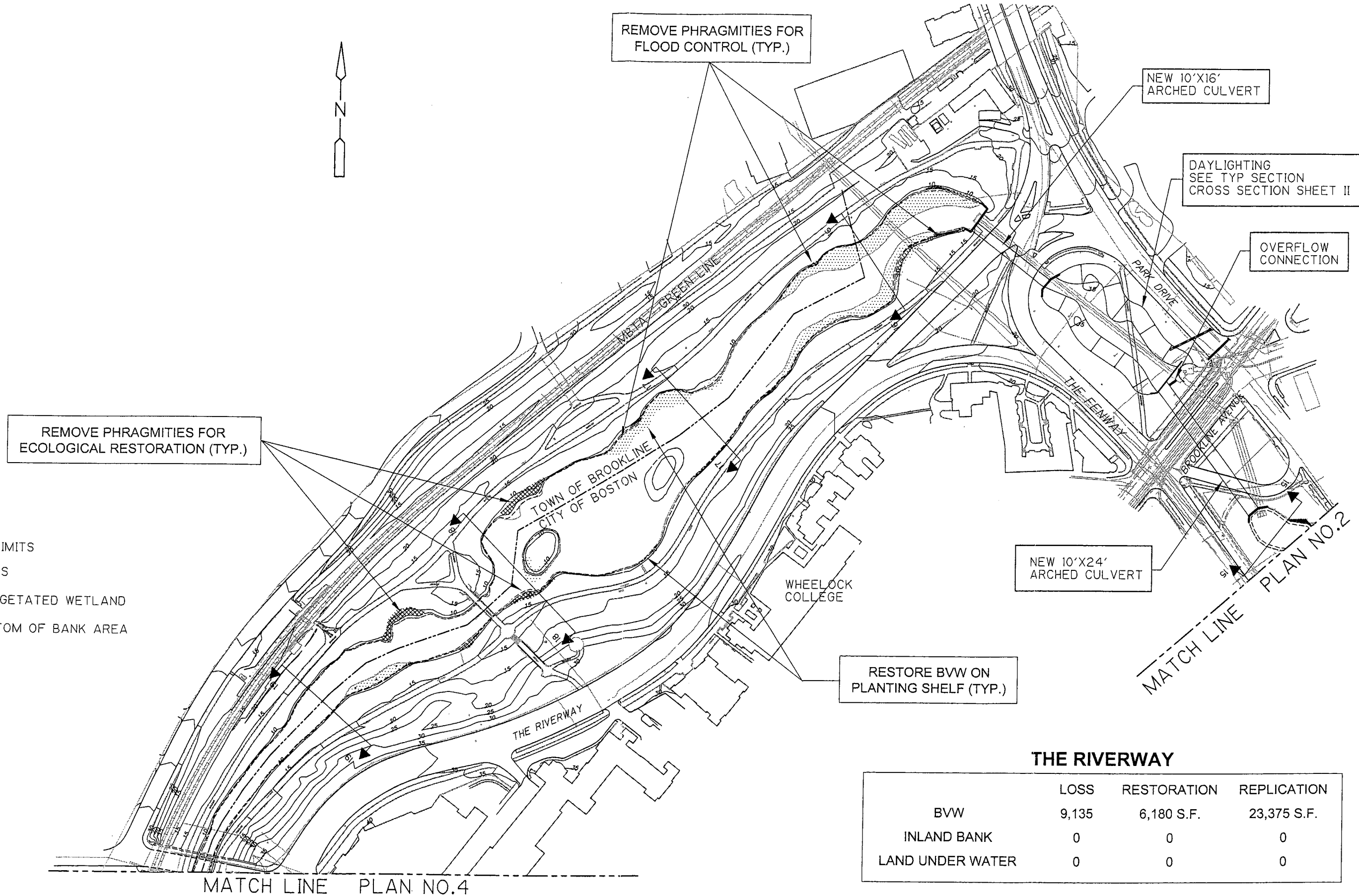
ERH/RAB/rab

Attachment 2

Notice of Project Change - Muddy River Flood Control, Water Quality, Habitat
Enhancement and Historic Preservation Project

EOEA # 11865





LEGEND

- PHRAGMITES LIMITS
- STAGING AREAS
- BORDERING VEGETATED WETLAND
- TOP AND BOTTOM OF BANK AREA

THE RIVERWAY

	LOSS	RESTORATION	REPLICATION
BVW	9,135	6,180 S.F.	23,375 S.F.
INLAND BANK	0	0	0
LAND UNDER WATER	0	0	0

DEPARTMENT OF THE ARMY

NEW ENGLAND DISTRICT
CORPS OF ENGINEERS

CONCORD, MASSACHUSETTS

WATER RESOURCES DEVELOPMENT PROJECT

MUDDY RIVER, BOSTON, MASSACHUSETTS

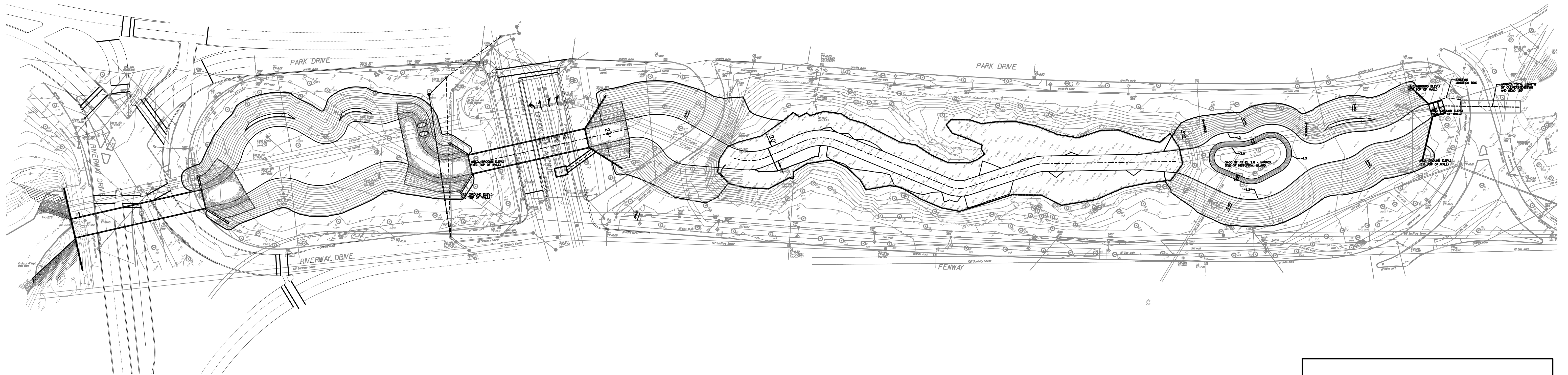
RECOMMENDED PLAN-FLOOD CONTROL &
ENVIRONMENTAL RESTORATION - PLAN NO.3

FIG.
5-5

Attachment 3

Notice of Project Change - Muddy River Flood Control, Water Quality, Habitat Enhancement and Historic Preservation Project

EOEA # 11865

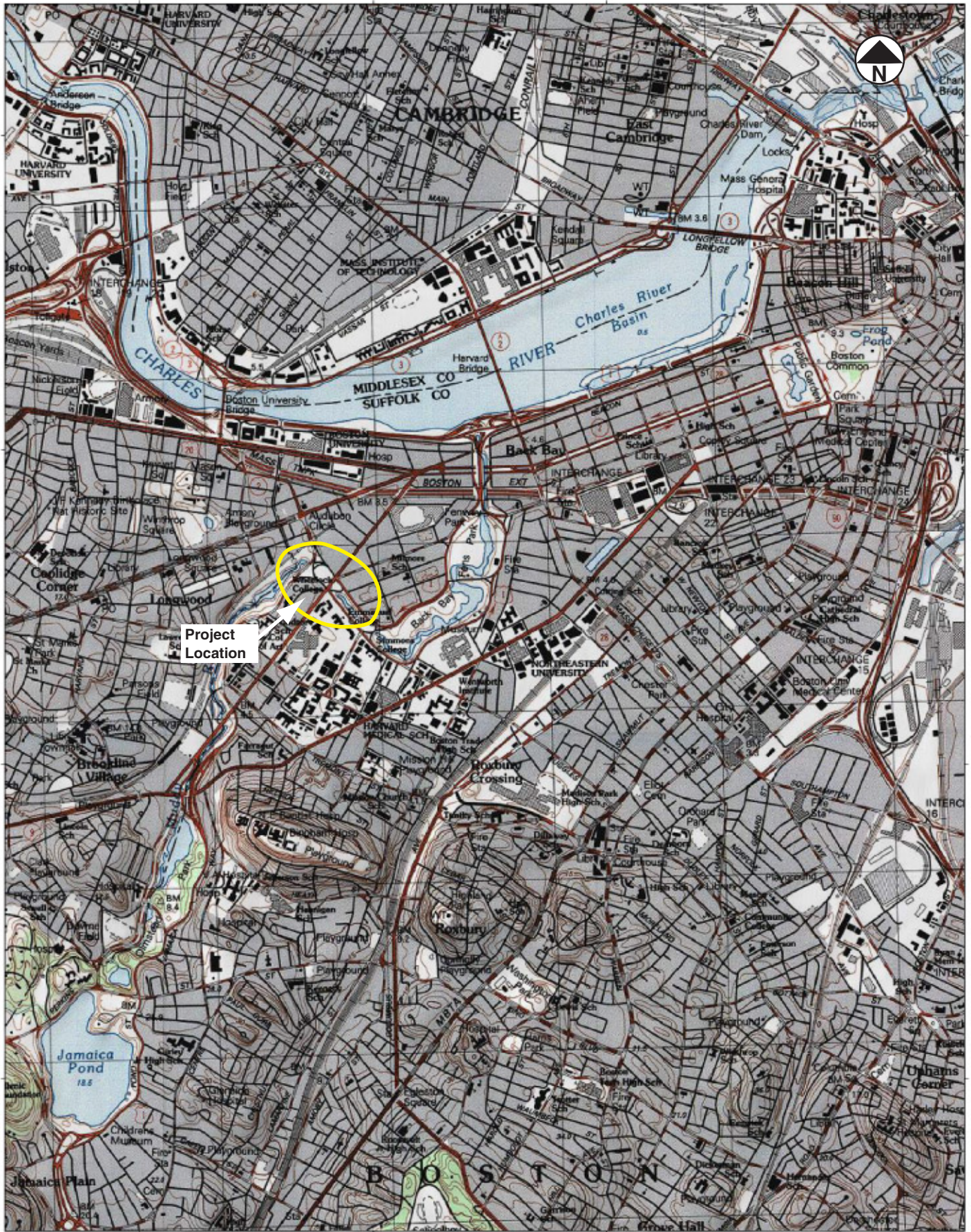


MUDDY RIVER FLOOD DAMAGE
REDUCTION AND ENVIRONMENTAL
RESTORATION PROJECT
(PHASE 1)
BOSTON AND BROOKLINE, MASSACHUSETTS

Attachment 4

Notice of Project Change - Muddy River Flood Control, Water Quality, Habitat
Enhancement and Historic Preservation Project

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Scale: 1 inch equals 1000 feet

Location: 042° 20'40" N 071° 06' 25" W

City of Boston, Massachusetts
Muddy River Flood Control Water Quality & Habitat
Enhancements & Historic Preservation Project
Project Location Map (Attachment 4)

Attachment 5

Notice of Project Change - Muddy River Flood Control, Water Quality, Habitat
Enhancement and Historic Preservation Project

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FEIR CIRCULATION LIST – Receive NPC Notification Letter

FEDERAL AGENCIES

Sen. Edward M. Kennedy
US Senator
2400 JFK Federal Building
Boston MA 02203

Sen. John Kerry
US Senator
One Bowdoin Square, Tenth Floor
Boston MA 02114

Congressman Barney Frank
29 Crafts Street, Suite 375
Newton MA 02458

Dorothy Reichard
Congressman Frank Office
29 Crafts Street
Newton MA 02458

Congressman Stephen Lynch
88 Black Falcon Avenue, Suite 340
Boston MA 02210

Congressman Michael Capuano
110 First Street
Cambridge MA 02141

Kate Auspitz
Office of Congressman Capuano
110 First Street
Cambridge MA 02141

Michael Keegan
US Army Corps of Engineers
696 Virginia Road
Concord MA 01742

David Webster
Chief Industrial Permitting
US EPA Region 1
1 Congress Street Suite 1100 CIP
Boston MA 02114

Received Hard Copy

* Commented on Draft EIR

Edward Reiner
US EPA Region 1
1 Congress Street Suite 1100 CIP
Boston MA 02114

Eric Hutchins
Habitat Conservation Division
National Marine Fisheries
One Blackburn Drive
Gloucester MA 01930

Maria Tur
US Fish & Wildlife Service
70 Commercial, Suite 300
Concord NH 03301

*Myra Harrison
US National Parks Service
Frederick Law Olmsted Historic Site
99 Warren Street
Brookline MA 02445

Robert Page
Olmsted Center for Landscape Preservation
Boston National Historical Park
Charlestown Navy Yard Quarter C
Boston, MA 02129

Peter Weiskel
US Geological Service
10 Bearfoot Rd.
Northborough MA 01532

Arthur Cleaves, Regional Administrator
Federal Emergency Management Agency, Region I
99 High Street 5th Floor
Boston MA 02110

*Commented on Draft EIR

G. Fred Vanderschmidt
Chief, Program Coordination Branch
Federal Emergency Management Agency, Region I
99 High Street 5th Floor
Boston MA 02110

Karen Malfy
CPD Representative
US Dept. of Housing and Urban Development
T. P. O'Neill Building
10 Causeway, Room 535
Boston MA 02222-1092

STATE AGENCIES

Ian A. Bowles, Secretary
Executive Office of Energy and Environmental Affairs
Attention: MEPA Office EOE No. 11865
100 Cambridge Street, Suite 900
Boston MA 02114

Received Hard Copy

Betsy Shure Gross
Executive Office of Environmental Affairs
100 Cambridge Street, Suite 900
Boston MA 02114

Received Hard Copy

Sara Cohen
Charles River Team Leader
DCR Office of Water Resources
251 Causeway Street, Suite 800
Boston MA 02114-2104

*Richard Sullivan, Commissioner
Department of Conservation and Recreation
251 Causeway Street
Boston MA 02114

Received Hard Copy

Martha C. King, Director
DCR Waterways Division
349 Lincoln Street, Bldg. 45
Hingham MA 02043

Joseph Orfant, Director of Planning
Department of Conservation and Recreation
251 Causeway Street
Boston MA 02114

*Commented on Draft EIR

Julia O'Brien, Chief Planner
Department of Conservation and Recreation
251 Causeway Street
Boston MA 02114

Don Guidoboni, Permits
Department of Conservation and Recreation
251 Causeway Street
Boston MA 02114

Patrice Kish

Received Hard Copy

Department of Conservation and Recreation
251 Causeway Street
Boston MA 02114

Thomas La Rosa
DCR, Counsel Office
251 Causeway Street Suite 900
Boston MA 02114-2104

Loraine M. DellaPorta, Esq.
Mass. Office of Dispute Resolution & Public Collaboration
UMass Boston McCormack Bldg
100 Morrissey Boulevard
Boston MA 02108

Tim Smith
Wetlands Restoration Program
Massachusetts CZM
251 Causeway Street, Suite 800
Boston, MA 02114-2136

*Brona Simon, SHPO
Massachusetts Historic Commission
220 Morrissey Blvd.
Boston MA 02125

Received Hard Copy

Steven Lipman
Department of Environmental Protection
One Winter Street, 6th Floor
Boston MA 02108

*John Felix, Deputy Regional Director
Department of Environmental Protection
One Winter Street, 6th Floor
Boston MA 02108

*Commented on Draft EIR

David Slagle
Department of Environmental Protection
205B Lowell Street
Wilmington MA 01887

Water Quality Certification
Department of Environmental Protection
One Winter Street
Boston MA 02108

Chapter 91 Program
MA DEP
One Winter Street
Boston MA 02108

*Don Boyce, Director
Massachusetts Emergency Management Agency
400 Worcester Road
Framingham MA 01702-5399

Amanda Veinotte
Natural Heritage & Endangered Species Program
Massachusetts Division of Fisheries & Wildlife
One Rabbit Hill Road
Westborough MA 01581

Cindy Delpapa, Stream Ecologist
Massachusetts Riverways Programs
251 Causeway Street, Suite 400
Boston MA 02114

*Paul J. Diodati, Director
Division of Marine Fisheries
251 Causeway Street, Suite 400
Boston MA 02114

MEPA Coordinator
Division of Marine Fisheries
251 Causeway Street
Boston MA 02114

Project Review Manager
Coastal Zone Management
251 Causeway Street
Boston MA 02114

*Commented on Draft EIR

Marianne Connelly
MWRA Charlestown Navy Yard
100 First Avenue, Building 39
Charlestown MA 02129

Toni Coyne-Hall
Mass. Dept. of Housing & Comm. Development
100 Cambridge Street, Suite 300
Boston MA 02114

Martin Pillsbury
Metropolitan Area Planning Council
60 Temple Place
Boston MA 02111

Todd Fontanella
Executive Office of Transportation
10 Park Plaza, Room 3170
Boston MA 02116

Jeffrey Senterman, Environmental Planner
Massachusetts Aeronautics Commission
10 Park Plaza, Room 6620
Boston MA 02116

Kevin Walsh, Acting Director
Environmental Services Division
Massachusetts Highway Department
10 Park Plaza, Room 4260
Boston MA 02116

Andrew Brennen
Massachusetts Bay Transportation Authority
10 Park Plaza
Boston MA 02116

Kenneth Beloverac, P.E.
Manager of Design, Track and Structure
Massachusetts Bay Transportation Authority
500 Arborway
Jamaica Plain MA 02130

William Tuttle
Dep. Dir. Planning
Massachusetts Turnpike Authority
10 Park Plaza
Boston MA 02116

*Commented on Draft EIR

Jacquelyn I. Wilkins
Aviation Planner
MassPort
One Harborside Drive
E. Boston MA 02128

Tom Ennis
MassPort
One Harborside Drive
East Boston MA 02128

Lt. James Jones
State Police
250 Leverett Circle
Boston MA 02114

Senator Therese Murray
Senate President
State House, Room 330
Boston MA 02133

Senator Jarrett Barrios
State House, Room 309
Boston MA 02133

Senator Jeffery Sanchez
State House Room 42
Boston MA 02133

Senator Steven A. Tolman
State House, Room 511-B
Boston MA 02133

Senator Dianne Wilkerson
State House, Room 312-C
Boston MA 02133

Sen. Cynthia Creem
State Senator
State House, Room 416B
Boston MA 02133

Rep. Salvatore F. DiMasi
Speaker of the House of Representatives
State House
Boston MA 02133

*Commented on Draft EIR

Rep. Marty Walz
State House Room 443
Boston MA 02133

Rep. Byron Rushing
State House Room 481
Boston MA 02133

Rep Elizabeth Malia
State House Room 472
Boston MA 02133

Rep. Frank I. Smizik
State Representative
State House Room 473F
Boston MA 02133

Rep. Gloria L. Fox
Room 167
State House
Boston MA 02133

Representative Ruth Balser
State House, Room 134
Boston MA 02133

Representative Kevin Honan
State House, Room 38
Boston MA 02133

Ann McGahan
CTPS
10 Park Plaza, Suite 2150
Boston MA 02116

LOCAL OFFICIALS

Hon. Thomas Menino, Mayor
Boston City Hall
Boston MA 02201

Michael Galvin
Chief of Basic City Services
One City Hall Plaza
Boston MA 02201

*Commented on Draft EIR

James W. Hunt III
Chief of Environmental and Energy Services
One City Hall Plaza
Boston MA 02201

*Antonia Pollak, Commissioner
Boston Parks & Recreation Department
1010 Massachusetts Avenue
Boston MA 02118

Received Hard Copy

Virginia Mayer
City of Boston-Washington, DC Office
1660 L Street NW, Suite 1050
Washington DC 20036

Maura Zlody
MEPA Reviewer
Boston Environment Department
One City Hall Plaza, Rm. 805
Boston MA 02201

Chris Busch, Executive Secretary
Boston Environment Department
Conservation Commission
One City Hall Plaza, Rm. 805
Boston MA 02201

Ellen Lipsey
Boston Environment Department
Boston Landmarks Commission
One City Hall Plaza, Rm. 805
Boston MA 02201

Received Hard Copy

Vineet Gupta
Boston Transportation Department
One City Hall Plaza
Boston MA 02201

Richard Loring
Boston Transportation Department
One City Hall Plaza
Boston MA 02201

*Commented on Draft EIR

Dennis Royer, Chief
Boston Public Works
One City Hall Plaza
Boston MA 02201

Vincent G. Mannering, Executive Director
Boston Water & Sewer Commission
980 Harrison Avenue
Boston MA 02119

*John P. Sullivan, Jr., PE
Chief Engineer
Boston Water & Sewer Commission
980 Harrison Avenue
Boston MA 02119

Received Hard Copy

Amy Schofield
Boston Water & Sewer Commission
980 Harrison Avenue
Boston MA 02119

Randi Lathrop
Boston Redevelopment Authority
One City Hall Plaza
Boston MA 02201

*Richard B. Mertens, AICP
Environmental Review Officer
Boston Redevelopment Authority
One City Hall Plaza
Boston MA 02201

Rosario Salerno
City Clerk
One City Hall Plaza
Boston MA 02201

Roderick J. Fraser Jr., Commissioner
Boston Fire Department Headquarters
115 Southampton Street
Boston MA 02118

Captain William Evans
Boston Police Department Area D
One City Hall Plaza, 5th Floor
Boston MA 02201

*Commented on Draft EIR

P. O. John Harden
Boston Police Department
1165 Blue Hill Avenue
Dorchester MA 02124

Jalal Ghaemghami
Boston Public Health Commission
1010 Massachusetts Avenue
Boston MA 02118

Richard Serino, Chief
Boston Emergency Medical Services
767 Albany Street
Boston MA 02118

Charles C. Yancy
City Council
City Hall
Boston MA 02201

Michael P. Ross
City Council
City Hall, 5th Floor
Boston MA 02201

Marta Rivera
Office of Councilor Ross
City Council
City Hall
Boston MA 02201

Councilor Charles Turner
City Council
City Hall
Boston MA 02201

Councilor John Tobin
City Council
City Hall
Boston MA 02201

Councilor Robert Consalvo
City Council
City Hall
Boston MA 02201

*Commented on Draft EIR

Maureen Feeney
Council President
City Council
City Hall
Boston MA 02201

Councilor John R. Connolly
City Council
City Hall
Boston, MA 02201

Councilor Sam Yoon
City Council
City Hall
Boston MA 02201

Councilor Michael Flaherty
City Council
City Hall
Boston MA 02201

Stephen J. Murphy
City Council
City Hall
Boston MA 02201

Nancy Daly, Chair
Board of Selectmen
333 Washington Street
Brookline MA 02445

Received Hard Copy

*Members of the Brookline Board of Selectmen
Nancy Daly, Chairwoman
Gil Hoy
Betsy DeWitt
Robert Allen
Jesse Mermell
333 Washington Street
Brookline MA 02445

Richard Kelliher
Town Administrator
333 Washington Street
Brookline MA 02445

Received Hard Copy

*Commented on Draft EIR

Tom DeMaio
Commissioner
Brookline Dept. of Public Works
333 Washington Street
Brookline MA 02445

Received Hard Copy

Peter Ditto
Brookline Dept. of Public Works
333 Washington Street
Brookline MA 02445

Received Hard Copy

Erin Gellentine
Director of Parks & Open Space
333 Washington Street
Brookline MA 02445

Received Hard Copy

Jerome Kampler, Chairman
Brookline Planning Board
Brookline Town Hall
333 Washington Street
Brookline MA 02245

Patrick Maloney, Chief Inspector
Brookline Department of Health
11 Pierce Street
Brookline MA 02245

Ann Blair
Town of Brookline
333 Washington Street
Brookline MA 02445

*Greer Hardwicke
Brookline Preservation Commission
333 Washington Street
Brookline MA 02445

Received Hard Copy

*Chairman
Brookline Conservation Commission
333 Washington Street
Brookline MA 02445

Tom Brady, Administrator
Brookline Conservation Commission
333 Washington Street
Brookline MA 02445

Received Hard Copy

*Commented on Draft EIR

Additional copies (5)

c/o Tom Brady
Administrator
Brookline Conservation Commission
333 Washington Street
Brookline MA 02445

Received Hard Copy

Captain Peter Scott
Brookline Police Department
350 Washington Street
Boston MA 02445

Robert Rooney, Commissioner
Newton Public Works Dept.
1000 Commonwealth Avenue
Newton Centre MA 02459

***CITIZENS ADVISORY COMMITTEE**
(received copies on or before 1/18/03)

Charles Alan Birnbaum, FASLA
Historic Landscape Initiative
National Park Service
1849 C Street N. W. (NC-320)
Washington DC 20240

*Isabella M. Callanan
Friends of the Muddy River
22 Bowker Street
Brookline MA 02445

Received Hard Copy

Suzanne Comtois
66 Queensbury Street, #319
Boston MA 02115

Received Hard Copy

Christine Cooper
Jamaica Pond Project
104 Childs Street
Jamaica Plain MA 02130

*Commented on Draft EIR

Jim Igoe
PreservationMass
45 School Street
Boston MA 02108

Frances Allou Gershwin
Attorney at Law
125 Summer Street
Boston, MA 02110-1624

Received Hard Copy

Ed Burke
151 Park Drive #35
Boston MA 02215

Received Hard Copy

Alan Goodman, Vice President
The Abbey Group
575 Boylston Street
Boston MA 02116

George Hagerty
646 Central Street
Stoughton MA 02072

Frances J. Kemp
14 Clearway Street #7
Boston MA 02115
Address No Longer Valid

John Leahy
156 I Street
South Boston MA 02127

*Arleyn A. Levee
51 Stella Road
Belmont MA 02478

Received Hard Copy

*Arlene Mattison
209 Pond Avenue
Brookline MA 02445

Received Hard Copy

*Hugh Mattison
209 Pond Avenue
Brookline MA 02445

Received Hard Copy

*Commented on Draft EIR

National Park Service
Olmsted Center for Landscape Preservation
c/o Waltham Experiment Station
240 Beaver Street (3rd floor)
Waltham MA 02452

*Kelly Brilliant, Executive Director
The Fenway Alliance
337A Huntington Avenue
Boston MA 02115

Received Hard Copy

George Proakis
P.O. Box 230600
Boston MA 02123-0600

Marion Sabal
390 Commonwealth Avenue, #411
Boston MA 02215

Fredericka Veikley
Fenway Civic Association
231 Park Drive #31
Boston MA 02215

Received Hard Copy

Katherine Mathew
47 Iroquois Street
Roxbury, MA 02120

Received Hard Copy

Tina Oddleifson, Executive Director
Brookline GreenSpace Alliance
40 Webster Place
Brookline MA 02445

Received Hard Copy

Kate Bowditch
Charles River Watershed Association
190 Park Road
Weston, MA 02493

Received Hard Copy

*Margaret Van Deusen
Charles River Watershed Association
190 Park Road
Weston, MA 02493

Received Hard Copy

*Commented on Draft EIR

OTHERS

*Julie Crockford, Executive Director
Emerald Necklace Conservancy
2 Brookline Place
Brookline MA 02445

Received Hard Copy

Jack Malone
Northeastern University
Cullinane Hall
288 St. Botolph Street
Boston MA 02115

Received Hard Copy

Irene V. Gillis
Restore Olmsted's Waterway
163 Kent Street
Brookline MA 02446

William Fowler
Mass. Historic Society
1154 Boylston Street
Boston MA 02215

Jean Belanger, Superintendent
Riverway Sq. Condominium Trust
120 The Riverway #19
Boston MA 02215

*Brendan J. Donovan, Director
Brookline Village Action Groups
P. O. Box 723
Brookline Village MA 02147

Pauline R. Katz
55A St. Paul Street
Brookline MA 02446

Harriet F. Koch
211 Sargent Road
Brookline MA 02445-7515

*Commented on Draft EIR

*Jan Henderson
MASCO
375 Longwood Avenue
Boston MA 02215-5328

Sr. Ann M. Donovan, SND
Emmanuel College
400 The Fenway
Boston MA 02215

John Businger, Chairman
Muddy River Action Group
33 St. Paul Street
Brookline MA 02446

Dermard K. Ransil, MD
226 Calumet Street
Boston MA 02120

Myrna Putziger
Rubin and Rudman LLP
50 Rowes Wharf
Boston MA 02110-3319

Susan Goodenow
Vice President/Public Affairs
Boston Red Sox
4 Yawkey Way
Boston MA 02215-3496

Robin Vranicar
27 Alexander Street
Framingham MA 01702

Eugenie Beal
40 Joy Street #3
Boston MA 02114

Claire Flury
95 Park Drive #1
Boston MA 02215

Ron Lyberger
25 Euston Street #2
Brookline MA 02446

*Commented on Draft EIR

Gina Crandall
117 Stedman Street
Brookline MA 02446

Edward Bell
Riverside Properties, Inc.
1 Washington Street, Suite 300
Wellesley MA 02481

Brenda Lew
Friends of the Muddy River
107 Queensbury Street
Boston MA 02215

Robert R. McCoy
23 Countryside Drive
Mattapan MA 02126

Stephen T. Kunian
One International Pl., 18th Floor
Boston MA 02110

Michael Dukakis
88 Perry Street
Brookline MA 02446

David A. Wahlstrom
Wentworth Institute of Technology
550 Huntington Avenue
Boston MA 02115

Fred Perry
32 Bowker Street
Brookline MA 02445

*Commented on Draft EIR

John R. Elwood
305 County Road
Buzzards Bay MA 02532

*Roger Frymire
22 Fairmont Avenue
Cambridge MA 02139-4423

Gordon J. Collins
483 Boylston Street
Brookline MA 02445

Matthew J. Kiefer
Goulston C Storrs
400 Atlantic Avenue
Boston MA 02110

M. Robert Barstow
401 Commonwealth Avenue
Boston MA 02215

Charles Button
92 Vermont Street
West Roxbury MA 02132

Michael Jasko
74 The Fenway #41
Boston MA 02115

Kate Geist
551 Brookline Avenue #4
Brookline MA 02445

Dr. Stanley A. Rumbaugh
Wheelock College
200 The Riverway
Boston MA 02215

Janice Miller
14 Roseland Street
Dorchester MA 02124

Mark Lisle
17 Park Vale #4
Brookline MA 02446

*Commented on Draft EIR

Alison Pultinas
81 Lawn Street
Roxbury MA 02120

Robert L. Coleman
Coleman & Sons
249 Smith Street
Waltham MA 02451

Dr. Gulshan Saini
24 Brook Street
Brookline MA 02445-6914

Edward S. Syrjala
P. O. Box 149
Centerville MA 02632

Martha Yuul
33 Pond Avenue, #B1219
Brookline MA 02445

Frances G. Beatty, Chair
Dept. of Landscape Architecture
University of Arkansas
230 Memorial Hall
Fayetteville AR 72701

Paul Mentag
71 Dugway Road
PO Box 322
Brownfield ME 04010

Lin Cheney Sasman, JPNC
27 Starr Lane
Boston MA 02130

Robert B. Canterbury
Audubon Circle Neighborhood Association
12 Aberdeen Street
Boston MA 02215

Stephen Clark
109 Westchester Road
Jamaica Plain MA 02130

*Commented on Draft EIR

Richard K. Domas
Hoyle, Tanner & Assoc., Inc.
45 Bromfield Street
Boston MA 02108

John Furlong
Radcliffe Institute
6 Ash Street
Cambridge MA 02138

Bentrice Nessen
ICON Architecture, Inc.
38 Chauncy
Boston MA 02111

Jean Stringham
233 Mason Terrace
Brookline MA 02446

Frank Farlow
8 Bowker Street
Brookline MA 02445

David Tuteim
16 Westgate Drive, #105
Woburn MA 01801

Jan Peretz
FCDC
72 Peterborough Street
Boston MA 02215

John A. Martin
48 Bradley Road
North Weymouth MA 02191

Dom D'Eramo
Rizzo Associates
One Grant Street
Framingham MA 01701-9005

Johanna Mendillo
The Boston Harbor Associates
374 Congress Street, #609
Boston MA 02210

*Commented on Draft EIR

Jeffery Ferris
Emerald Necklace Greenway Project
51 Sedgewick Street
Jamaica Plain MA 02130

Thomas B. Kennedy
Sovereign Bank
46 Glen Road
Brookline MA 02445

Lisa Tucker-Kellogg
12 Monmouth Court
Brookline MA 02446

*Frances Shedd-Fisher
149 Walnut Street
Brookline MA 02445

*George Hagerty
Fenway Studios, Inc.
30 Ipswich Street
Boston MA 02115

Bike Boston's Emerald Necklace Greenway Project
P.O. Box 743
Boston MA 02130

*John S. Stanley
Deputy Director for Operations
Museum of Fine Arts
465 Huntington Avenue
Boston MA 02115-5597

*John M. Ferrell, President
YMCA of Greater Boston
316 Huntington Avenue
Boston MA 02115-5019

*Daniel Steiner, President
New England Conservatory
290 Huntington Avenue
Boston MA 02115

*Commented on Draft EIR

*Paul Riccardi
Dean for Admin & Operations
Harvard School of Public Health
677 Huntington Avenue
Boston MA 02115

*Katherine Sloan, President
Mass College of Art
621 Huntington Avenue
Boston MA 02115

*Charles E. Beveridge
Series Editor
The Frederick Law Olmsted Papers
American University
4400 Massachusetts Avenue NW
Washington DC 20016

Lee Albright
282 Newton Street
Brookline MA 02146

Sarah Freeman
Arborway Coalition
22 The Arborway
Jamaica Plain MA 02130

James Morgan
Fenway Action Coalition
82 Jersey Street, #5
Boston MA 02215

Joan Fried
36 Armory Street
Brookline MA 02146

Jean Morgan
Franklin Park Coalition
12 Dabney Street
Roxbury MA 02119

James Norcott
25 Glen Road
Brookline MA 02146

*Commented on Draft EIR

Dick Garver
23 Monmouth Court
Brookline MA 02446

Sara Nesson
8 Lansing Rd.
West Newton MA 02465

Bran Ben Joseph
Dept. of Urban Studies & Planning
MIT
77 Massachusetts Avenue, 10-485
Cambridge MA 02139

Pamela Goodman
Brookline Greenspace Alliance
40 Webster Place
Brookline MA 02146

Susan Parks
Boston Preservation Alliance
45 School Street
Boston MA 02108

Ronald S. Gray
5 Wingwam Street
North Brookfield MA 01535

Joan Goodwin
545 Centre Street, Apt. 407
Jamaica Plain MA 02130-2033

Molly Paul
Brookline Community Fund
40 Webster Place
Brookline MA 02445

Karen Boxer
Fenway Civic Association
31 Queensberry Street
Boston MA 02115

Dan Bowden
Berklee College
36 Bowker Street
Brookline MA 02446

*Commented on Draft EIR

Pitt, Hubbard and Marshall
201 Devonshire Street
Boston MA 02110
Attn: Heidi

Anne Hawley
Gardner Museum
2 Palace Road
Boston MA 02115

Bruce Boyer
Wentworth Institute
550 Huntington Avenue
Boston MA 02115

Rizzo Associates
1 Grant Street
Framingham MA 01702

Richard Heath
42 Bourne Street
Boston MA 02130

Sgt. Carlos Prisco
State Police
400 Terminal D
Logan Airport
E. Boston MA 02128

Jim Brown
97 Franklin Street
Stamford CT 06902

Ruth Hennig
4 Linden Court
Brookline MA 02146

John Heinstad
Wentworth Institute
550 Huntington Avenue
Boston MA 02215

B. Andrew Campion
122 Riverway #8
Boston MA 02215

*Commented on Draft EIR

Willie Hicks Jr.
56 Tennis Road
Mattapan MA 02126

John Iapini
12 Dane Street
Jamaica Plain MA 02130

Joe Ignazio
EA Engineering, Science and Technology
Wyman Building
175 Middlesex Turnpike
Bedford MA 01730

Gerry Wright
Jamaica Park Advisory Group
36 Perkins Street
Jamaica Plain MA 02130

Aric Kabillio
Americorps/Water Watch
29 Temple Place
Boston MA 02111

David Riley
150 Aspinwall Avenue
Brookline MA 02446

Frank Keefe
The Keefe Company
27 School Street
Boston MA 02108

Albert Rex
Boston Preservation Alliance
45 School Street
Boston MA 02118

Joseph Cordell
Fenway Garden Society
86 Jersey Street
Boston MA 02108

John Kelly
66 The Fenway #22
Boston MA 02115

*Commented on Draft EIR

Dr. Robert Cook
Arnold Arboretum
125 The Arborway
Jamaica Plain MA 02130

Carl Koechlin
Fenway CDC
73 Hemenway Street
Boston MA 02115

Stanley Rumtage
Wheelock College
200 The Riverway
Boston MA 02215

April Cottini
2600 Hillegas Avenue, #1
Berkeley CA 94704-3334

Margaret Kenney
44 Washington Street #116
Brookline MA 02146

Prof. David E. Langseth, Sc.D., P.E.
Dept. of Civil & Environmental Engineering
Northeastern University
360 Huntington Avenue
Boston MA 02115

Paul Foster
938 Metropolitan Avenue
Hyde Park MA 02136

Vivian Li
TBHA
374 Congress Street, Suite 609
Boston MA 02210

Joan LeBlanc
The Boston Harbor Associates
374 Congress Street
Suite 609
Boston MA 02210

*Commented on Draft EIR

Gregory Selkoe
Jamaica Hills Association
166 Moss Hill Road
Jamaica Plain MA 02130

Wilbur & Maria Cove
75 St. Alphonsus Street #407
Boston MA 02120

John Lewis
97 Newbury Street
Boston MA 02116

Helen Cox
11 Park Drive #22
Boston MA 02215

Karen Wepsic
Federation for Public Transportation
84 Prince Street
Jamaica Plain MA 02130

Lawrence Shubow Esq.
22 Crescent Road
Mashpee MA 02649-4312

John Shea
26 Brook Street
Brookline MA 02445

Josephine DeMarco
99 Kent Street #7 418
Brookline MA 02146

Bertha DeLeon
60 High Street
Brookline MA 02146

Nancy Searholes
1 Field Rd.
Lexington MA 02421-8014

Lauren Dewey Platt
41 Park Drive
Boston MA 02215

*Commented on Draft EIR

Jeff Logsdon
Loeb Fellow
48 Trowbridge Street
Cambridge MA 02138

Susan M. Mackey
Wheelock College
200 The Riverway
Boston MA 02215

Jennifer Maiola
The Back Bay Courant
PO Box 1248
Boston MA 02117

Mindy Lubber
199 Babcock Street
Brookline MA 02146

Neil Lucey
5 Fuller Street
Brookline MA 02146

Hooker Talcott
420 Warren Street
Brookline MA

Leo Entwistle
3 Payson Road
Chestnut Hill MA 02467

Ray Foley
77 West Milton Street
Hyde Park MA 02136

George Marcis
61 Park Drive #9
Boston MA 02215

David Epstein
The Abbey Group
575 Boylston Street
Boston MA 02116

Jeanne McHallam
10 Richwood Street
West Roxbury MA 02132

*Commented on Draft EIR

T. Meyer
Sasaki Associates
64 Pleasant Street
Watertown MA 02472

Jane Walker Pfister
31 Linden Street
Brookline MA 02445

Peter M. Bryant, CFO
Gardner Museum
2 Palace Road
Boston MA 02215

Michael Merrigan
Starbucks Coffee Company
One Charles Street
Boston MA 02114

Sam Bass Warner, Jr.
15 Cottage Street
Cambridge MA 02139

Christopher Vanriper
214 Chesnut Street
Brookline MA 02445

Liz Vieza
The Halvorson Company
161 Massachusetts Avenue
Boston MA 02115

*Fred Perry, President
Brookline GreenSpace Alliance
40 Webster Place
Brookline MA 02445

*Richard Freeland, President
Northeastern University
110 Churchill Hall
Boston MA 02115

*Commented on Draft EIR

*David R. Hornfischer
Vice President for Admin and Finance
Berklee College of Music
1140 Boylston Street
Boston MA 02215-3693

BROOKLINE TOWN MEETING MEMBERS – PRECINCT 1
(for whom addresses are available)

Peter Ames 90 Ivy Street Brookline MA 02446	Received Hard Copy
---	---------------------------

Steven Kanes 89 Carlton Street Brookline MA 02446	Received Hard Copy
---	---------------------------

Frederick Lebow 71 Colchester Street Brookline MA 02446	Received Hard Copy
---	---------------------------

John Schemmer 33 Euston Street Brookline MA 02446	Received Hard Copy
---	---------------------------

Susan Williams 35 Prescott Street Brookline MA 02446	Received Hard Copy
--	---------------------------

Michael Robbins 105 Colchester Street Brookline MA 02446	Received Hard Copy
--	---------------------------

Pamela Zelnick 5 Carlton Street Brookline MA 02446	Received Hard Copy
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S. Parkman Shaw 19 Colchester Street Brookline MA 02446	Received Hard Copy
---	---------------------------

Melvin Clouse 59 Monmouth Street Brookline MA 02446	Received Hard Copy
---	---------------------------

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Karen Lieff
22 Carlton Street
Brookline MA 02446

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REPOSITORY COPIES

Boston Parks & Recreation Department
Attn: Margaret Dyson
1010 Massachusetts Avenue, 3rd Floor
Boston, MA 02118

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Attn: Ellen Lipsey
Boston City Hall, Room 805
One City Hall Plaza
Boston, MA 02215

Received Hard Copy

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Boston, MA 02116

Brookline Department of Public Works
Attn: Tom Brady
Brookline Town Hall, 4th Floor
333 Washington Street
Brookline, MA 02445

The Emerald Necklace Conservancy
Attn: Don Eunson
Two Brookline Place
Brookline, MA 02445

Frederick Law Olmsted National Historic Site
Attn: Mark Swartz
National Park Service
99 Warren Street
Brookline, MA 02445

MASCO
Attn: Jan Henderson
375 Longwood Avenue
Boston, MA 02215

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Massachusetts Historic Society
Attn: Peter Drummey or William Fowler
1154 Boylston Street
Boston, MA 02215

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Attn: Alice Roberts
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Jamaica Plain, MA 02130

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Attn: Librarian
361 Washington Street
Brookline, MA 02445

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Muddy River Distribution List (Hard Copies of NPC)

Julie Crockford, Executive Director
Emerald Necklace Conservancy
2 Brookline Place
Brookline, MA 02445

Kate Bowditch
Charles River Watershed Association
190 Park Road
Weston, MA 02493

Kelly Brilliant, Executive Director
The Fenway Alliance
337A Huntington Avenue
Boston, MA 02115

Ed Burke
151 Park Drive #35
Boston, MA 02215

Isabella M. Callanan
Friends of the Muddy River
22 Bowker Street
Brookline, MA 02445

Erin Chute Gallentine
Director of Parks & Open Space
Municipal Service Center
870 Hammond Street
Chestnut Hill, MA 02467

Suzanne Comtois
66 Queensbury Street, #319
Boston, MA 02115

Attention: Paula Cortes
c/o BSLA Chapter Office
19 Harrison Street
Framingham, MA 01702

Antonia M. Pollak
Commissioner
Boston Parks & Recreation Dept
1010 Massachusetts Ave
Boston MA 02118

Frances Allou Gershwin
Attorney at Law
Burns and Levin LLP
125 Summer Street
Boston, MA 02110

Betsy Shure Gross
EOEA
100 Cambridge Street, 9th Floor
Boston, MA 02114

Gary Gross
c/o Preservation Commission
Town Hall
333 Washington St.
Brookline, MA 02445

Frances J. Kemp
14 Clearway Street #7
Boston, MA 02115
Address No Longer Valid

Patrice Kish
Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114

Richard Sullivan
Commissioner
Department of Conservation and Recreation
251 Causeway Street
Boston, MA 02114

Arleyn A. Levee
51 Stella Road
Belmont, MA 02478

Ellen Lipsey
Boston Environment Department
Landmarks Commission
One City Hall Plaza, Rm. 805
Boston, MA 02201

Jack Malone
Northeastern University
Culliane Hall
288 St. Botolph Street
Boston, MA 02115

Katherine Matthew
47 Iroquois Street
Roxbury, MA 02120

Jan Henderson
MASCO
375 Longwood Avenue
Boston, MA 02215

Briony Angus
MEPA
100 Cambridge Street, Suite 900
Boston, MA 02114

Michael F. Keegan
US Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

Arlene Mattison
209 Pond Avenue
Brookline, MA 02445

Hugh Mattison
209 Pond Avenue
Brookline, MA 02445

Ken McBride
Director MEMA
Executive Office Of Public Safety
One Ashburton Place
Suite 2133
Boston, MA 02108

Tom Brady
Administrator Conservation Commission
Municipal Service Center
870 Hammond Street
Chestnut Hill, MA 02467

Tina Oddleifson
Brookline GreenSpace Alliance
40 Webster Place
Brookline, MA 02445

Marion Sabal
390 Commonwealth Avenue, #411
Boston, MA 02215

Brona Simon
Massachusetts Historical Commission
State Archives Building
220 Morrissey Boulevard
Boston, MA 02125

Margaret Van Deusen
Charles River Watershed Association
190 Park Road
Weston, MA 02493

John Sullivan
Boston Water and Sewer Commission
980 Harrison Avenue
Boston, MA 02119

Fredericka Veikley
Fenway Civic Association
231 Park Drive #31
Boston, MA 02215

Secretary Ian A. Bowles
Attention: MEPA Office
100 Cambridge Street, Suite 900
Boston, MA 02114

Richard Kelliher
Town Administrator
Old Lincoln School
194 Boylston Street (RT 9)
Brookline, MA 02445

A. Thomas DeMaio
Commissioner, Public Works
Municipal Service Center
870 Hammond Street
Chestnut Hill, MA 02467

Margaret Dyson
Director of Historic Parks
Boston Parks & Recreation Dept
1010 Massachusetts Ave
Boston MA 02118

Robert Kachinsky
Muddy River Project Management
Boston Parks & Recreation Dept
1010 Massachusetts Ave
Boston MA 02118

Peter Ditto
Director of Engineering and Transportation
Municipal Service Center
870 Hammond Street
Chestnut Hill, MA 02467

Greer Hardwicke
Old Lincoln School
199 Boylston Street (RT 9)
Brookline, MA 02445

Jesse Mermell
149 Winthrop Road
Brookline, MA 02445

Betsy DeWitt
94 Upland Road
Brookline, MA 02445

Nancy Daly
Chairman
161 Rawson Road
Brookline, MA 02445

Robert Allen
296 Russett Road
Chestnut Hill, MA 02467

Gil Hoy
295 Reservoir Road
Chestnut Hill, MA 02467

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Peter Ames
90 Ivy Street
Brookline, MA 02446

Robert Schram
47 Monmouth Street
Brookline, MA 02446

Laura Weisel
87 Ivy Street
Brookline, MA 02446

Loretta Slover
7 Colchester Street
Brookline, MA 02446

Cathleen Cavell
27 Monmouth Court
Brookline, MA 02446

Thomas Vitolo
20 Chapel Street
Brookline, MA 02446

Pamela Zeinick
5 Carlton Street
Brookline, MA 02446

Ernest Cook
4 Euston Street
Brookline, MA 02446

Sherrell Downes
71 St. Mary's Street
Brookline, MA 02446

Stephen Morse
54 Powell Street
Brookline, MA 02446

Melvin Clouse
59 Monmouth Street
Brookline, MA 02446

Thomas Higgins
90 Carlton Street
Brookline, MA 02446

Michael Robbins
105 Colchester Street
Brookline, MA 02446

Emily Johnson
126 Amory Street
Brookline, MA 02446

Karen Lieff
22 Carlton Street
Brookline, MA 02446